

REMARKS

Interview Summary

Applicant would like to thank Examiners Colon and Hafiz for the telephonic interview on January 29, 2004. In summary, the interview focused on claim 1 and U.S. Patent No. 6,190,287 to Nashner. Applicant's representatives argued that Nashner fails to disclose each of the claimed elements, and particularly argued that Nashner fails to disclose quantifying a first actual performance metric before an event occurrence bearing of an actual skill level of the individual, quantifying a second actual performance metric after the event occurrence, and determining a result of the event occurrence on an ability of the individual to carry out the defined performance based on the first and second actual performance metrics. Applicant's representatives further argued that the intended meanings of the terms "defined performance" and "actual skill level" are not disclosed in Nashner. In response, Examiners Colon and Hafiz maintained the rejection of claim 1 in view of Nashner. Thereafter, Applicant's representatives and Examiners Colon and Hafiz agreed that a preliminary amendment should be submitted to further clarify the intended meanings of the terms "defined performance" and "actual skill level."

Claim Rejections

The Patent Office rejected claims 1-30 under 35 U.S.C. §102 (e) as being anticipated by Nashner (U.S. Patent No. 6,190,287). "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 UPPQ 2d 1051, 1053 (Fed. Cir. 1987).

Regarding claim 1, Applicant has amended claim 1 to further clarify the intended meanings of the terms "defined performance" and "actual skill level." In view of the amendment, Nashner fails to disclose any of the claimed steps. Step (a) reads "quantifying a first actual performance metric for a defined performance of an individual carrying out task before an event occurrence bearing on an actual skill level for a particular skill of the individual, wherein the skill of the individual may or may not bear on the defined performance for the individual carrying out the task." Nashner only discloses quantifying the performance of an individual carrying out a training program (event occurrence). Nashner does not disclose quantifying the defined performance (ex. forms per day) of the individual carrying out a task (ex. filling out

forms) before an event occurrence (ex. typing class) bearing on a skill (ex. typing) that may or may not bear on the defined performance (ex. forms per day) of the individual carrying out the task (ex. filling out forms).

Step (b) reads "quantifying a second actual performance metric for the defined performance of the individual carrying out the task after the event occurrence." Nashner only discloses quantifying the performance of an individual during a training program (event occurrence). Nashner does not disclose quantifying the performance (ex. forms per day) of the individual carrying out a task (ex. filling out forms) after an event occurrence (ex. typing class).

Step (c) reads "determining a result of the event occurrence on an ability of the individual to carry out the task based on the first and second actual performance metrics." Nashner discloses determining the effectiveness of the training program (event occurrence) for the individual based on information gathered while the individual is performing the training program and information gathered during the individual's previous training. Nashner does not disclose determining a result of the event occurrence (ex. typing class) on the ability of the individual to carry out a task (ex. filling out forms).

Since Nashner fails to expressly or inherently disclose any of the steps of claim 1, claim 1 is allowable.

For at least the same reasons, claims 2-30 are also allowable.

In view of the discussions above, claims 1-30 are allowable. Reconsideration is respectfully requested. If any issues remain, the examiner is encouraged to contact the undersigned attorney of record to expedite allowance and issue.

CERTIFICATE OF TRANSMISSION	
I HEREBY CERTIFY THAT THIS DOCUMENT IS BEING TRANSMITTED VIA FACSIMILE ON THE DATE INDICATED BELOW, AND IS ADDRESSED TO:	
Examiner: Catherine M Colon Art Unit 3623 Fax: 703-872-9306	
<u>Kelly Farrow</u>	Name of Sender
<u>[Signature]</u>	Signature
<u>2/16/04</u>	Date of Transmission

Respectfully submitted,

WITHROW & TERRANOVA, P.L.L.C.

By.

[Signature]
Benjamin S. Withrow
Registration No. 40,876
P.O. Box 1287
Cary, NC 27512
Telephone: (919) 654-4520

Date: February 16, 2004
Attorney Docket: 1004-001